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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

SUNWAVE GAS & POWER INC.,

Debtor In a Foreign Proceeding.

Chapter 15

Case No.

**FOREIGN DEBTOR'S APPLICATION FOR ENTRY OF AN ORDER (I) SCHEDULING  
RECOGNITION HEARING, (II) SPECIFYING DEADLINE FOR FILING  
OBJECTIONS, (III) SPECIFYING FORM AND MANNER OF SERVICE AND (IV)  
GRANTING RELATED RELIEF**

A. Farber & Partners Inc., as the duly authorized foreign representative (the “Foreign Representative” or the “Petitioner”), as defined by section 101(24) of title 11 of the United States Code (the “Bankruptcy Code”), of Sunwave Gas & Power Inc. (the “Foreign Debtor”), by and through its undersigned counsel, hereby files this application (the “Application”), and respectfully states as follows:

**RELIEF REQUESTED**

1. Petitioner respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Notice Order”): setting May 23, 2022, or as soon thereafter as the Court’s calendar permits, as the date (the “Recognition Hearing Date”) for the hearing (“Recognition Hearing”) on the relief sought in the *Verified Petition For (I) Recognition Of*

*Foreign Main Proceeding, (II) Recognition Of Foreign Representative, And (III) Related Relief and Memorandum Of Law In Support* (the “Verified Petition”),<sup>1</sup> filed contemporaneously herewith; (b) setting the seventh day before the date of the Recognition Hearing as the deadline by which any responses or objections to the Petition must be received (the “Objection Deadline”); (c) approving the form of notice of the Recognition Hearing (the “Recognition Notice”), substantially in the form attached hereto as **Exhibit B**; (d) approving the manner of service of the Recognition Notice as described herein; (e) approving the manner of service on the Master Service List (as defined below) of any pleadings that the Petitioner files in the Chapter 15 Case; and (f) granting certain related relief.

### **JURISDICTION AND VENUE**

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Foreign Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(P). As set forth in the Chapter 15 Petition, venue is proper in this district pursuant to 28 U.S.C. § 1410.

4. This chapter 15 case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of the petition for recognition of the Canadian Proceeding (defined below) under section 1515 of the Bankruptcy Code.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Verified Petition.

5. The statutory bases for the relief requested herein are sections 1504, 1510, 1515, 1517, and 1521 of the Bankruptcy Code, rules 2002(l), 2002(m), 2002(p), 2002(q), and 9007 of the Bankruptcy Rules, and rules 2002-4 and 9013- 1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **BACKGROUND**

6. The Canadian Proceeding was commenced February 23, 2022, under the Section 49 of Canada’s Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3) (the “Bankruptcy and Insolvency Act”), pursuant to which the Petitioner was appointed as trustee of the Foreign Debtor as reflected in the Certificate of Appointment.

7. On April 18, 2022 (the “Petition Date”), the Petitioner commenced this case (the “Chapter 15 Case”) by filing a voluntary petition for the Foreign Debtor under chapter 15 of the Bankruptcy Code.

8. Contemporaneously with the filing of the Verified Petition and this Application, the Petitioner filed the *Declaration of Foreign Representative Pursuant To 11 U.S.C. § 1515 And Rule 1007(A)(4) of The Federal Rules of Bankruptcy Procedure and In Support of Verified Petition (I) For Recognition Of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief and Memorandum of Law in Support* (the “Declaration”).

9. Additional information about the Foreign Debtor’s business, the events leading up to the Petition Date, and the facts and circumstances surrounding the Foreign Debtor, the Canadian Proceeding, and the Chapter 15 Case can be found in the Verified Petition or Declaration, which are incorporated herein by reference.

### **BASIS FOR RELIEF**

#### **I. Form and Manner of Service of the Notice**

10. Bankruptcy Rule 2002(q)(1) provides that:

....the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, [shall be given] at least 21 days' notice by mail of the hearing [on the petition for recognition of a foreign proceeding].

11. Bankruptcy Rule 2002(q), however, does not provide any additional details regarding the form and manner in which such notice must be given. Pursuant to Bankruptcy Rules 2002(m) and 9007, when notice is to be given under the Bankruptcy Rules, the presiding court may designate the form and manner in which such notice shall be given. Bankruptcy Rules 2002(m), 9007.

12. Pursuant to Bankruptcy Rule 2002(q) and Local Rule 2002-4, the Petitioner proposes to serve the Recognition Notice, by US or Canadian mail, first class postage prepaid, within two business days of entry of the Proposed Notice Order on the following parties or their respective counsel: (i) all persons or bodies authorized to administer foreign proceedings of the Foreign Debtor; (ii) all entities against whom provisional relief is being sought under Section 1519 of the Bankruptcy Code, including CWave Power & Gas Inc. ("CWave"); (iii) all parties to litigation pending in the United States in which the Foreign Debtor is a party as of the Petition Date; (iv) the Office of the United States Trustee for the Southern District of New York; (v) the Foreign Debtor; (vi) the Internal Revenue Service; (vii) the Securities and Exchange Commission; and (viii) all other parties which have requested notice (the "Other Interested Parties") in this Chapter 15 Case (collectively, the "Notice Parties").

13. The Recognition Notice will: notify the Notice Parties of (i) the filing of the Petition and certain related pleadings pursuant to chapter 15 of the Bankruptcy Code, including the Petition; (ii) the Recognition Objection Deadline and the date and time of the Recognition Hearing; and (iii)

a telephone number and an email address by which interested parties may obtain various pleadings filed in the Chapter 15 Case.

## **II. Notice of Appearance**

14. In the event any Other Interested Party subsequently files a notice of appearance in the Chapter 15 Case prior to the Recognition Hearing, the Petitioner will serve the Recognition Notice and related pleadings on such party within three business days of the filing of such notice of appearance to the extent the Petitioner has not already served such documents on the party.

## **III. Master Service List**

15. The Petitioner proposes to serve all pleadings that it files in the Chapter 15 Case after the Petition Date by United States or Canadian mail, first class postage prepaid, on the following parties or their respective counsel: (i) any known creditors of the Foreign Debtor; (ii) the Foreign Debtor; (iii) the Internal Revenue Service; (iv) the Office of the United States Trustee for the Southern District of New York; and (v) any Other Interested Parties (collectively, the “Master Service List”).

16. Under the facts and circumstances of the Foreign Debtor’s Chapter 15 Case, the Petitioner submits that service of the Recognition Notice in the manner proposed herein will provide the Notice Parties due and sufficient notice and service of such matters and any associated objection deadlines and hearing dates.

17. Furthermore, the Recognition Notice provides multiple efficient ways for any party receiving such notice to obtain copies of pleadings filed in this Chapter 15 Case, as it provides a telephone number and an email address that can be used to obtain critical documents in the Chapter 15 Case. Additionally, service by the Petitioner of all pleadings that it files after the Petition Date

in the Chapter 15 Case by United States or Canadian mail, first class postage prepaid, on the Master Service List is an efficient and effective way to provide notice to such parties.

18. Accordingly, the Petitioner requests that the Court approve service of the Recognition Notice on the Notice Parties as all the notice that is due and sufficient under the circumstances.

### **REQUEST TO WAIVE SERVICE TO CERTAIN FOREIGN CREDITORS**

19. Service on foreign creditors is governed by section 1514 of the Bankruptcy Code. Despite its placement in the section of the Bankruptcy Code dealing with “ancillary and other cross-border cases,” it is unclear whether Section 1514 has any application in the context of a case under Chapter 15 of the Bankruptcy Code. Certain commentators have explained that the section is the “last in a series of sections dealing with the international aspects of cases under chapters *other than chapter 15*.” 8 COLLIER ON BANKRUPTCY, ¶1514.01 (16th ed. Rev. 2019) (emphasis added).

20. To the extent that the Foreign Debtor has any creditors and section 1514 does apply, the Petitioner requests that service in this Chapter 15 Case be limited to creditors and other interested parties that are located in the U.S., and that the Petitioner be excused from having to serve interested parties located elsewhere.

21. Serving creditors, if any, beyond the United States would be potentially burdensome, would add unnecessary expense, and would serve little purpose. Indeed, the underlying relief sought in this Chapter 15 Case falls entirely within the territorial United States, so these Chapter 15 Cases should have little to no impact on such creditors.<sup>2</sup>

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<sup>2</sup> If the Court finds such notice necessary, the Petitioner shall amend the petition in the Canadian Proceeding or make another appropriate supplemental filing therein indicating the filing of the chapter 15 Petition.

### **NOTICE**

22. Upon filing of this Motion, Petitioner shall serve the Notice Parties with a copy of this Motion. Under the circumstances and in light of the nature of the relief requested, the Petitioner submits and requests that this Court hold that no further notice is required.

### **MOTION PRACTICE**

23. This Motion includes cites to the applicable rules and statutory provisions upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Petitioner submits this Motion satisfies Local Rule 9013-1(a).

### **NO PRIOR REQUEST**

24. The Petitioner has not previously sought the relief requested herein from this Court or any other court.

### **CONCLUSION**

WHEREFORE, the Petitioner respectfully requests entry of the Proposed Notice Order and such other and further relief as this Court deems just and proper.

Dated: April 21, 2022

/s/ Andrew L. Buck

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*Counsel to the Petitioner A. Farber & Partners Inc.*



## **Exhibit A**

Andrew L. Buck  
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*Attorneys for A. Farber & Partners Inc.*

*In its capacity as Foreign Representative of Foreign Debtor, Sunwave Gas & Power Inc.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

SUNWAVE GAS & POWER INC.,

Debtor In a Foreign Proceeding.

Chapter 15

Case No.

**[PROPOSED] ORDER SPECIFYING THE FORM AND MANNER OF SERVICE OF  
NOTICE**

Upon consideration of the application (the “Application”) of A. Farber & Partners Inc., as the duly authorized foreign representative (the “Petitioner”) for the above-captioned debtor (the “Foreign Debtor”), seeking entry of an order (a) scheduling a hearing on the relief sought in the Petition, (b) seeking the deadline by which any responses or objections to the Verified Petition must be received, and (c) specifying the form and manner of service of notice of the hearing on the relief sought in the Petition; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 109 and 1501; and that this Court may enter a final order consistent with Article III of the United States Constitution;

venue being proper before the Court pursuant to 28 U.S.C. § 1410(1) and (3); adequate and sufficient notice of the filing of the Application having been given by the Petitioner; it appearing that the relief requested in the Application is necessary and beneficial to the Foreign Debtor; and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Application is **GRANTED** as set forth herein.
2. A hearing on the Verified Petition (the “Recognition Hearing”) to consider entry of a final order recognizing the Petition pursuant to section 1517 (the “Recognition Order”) is scheduled for \_\_\_\_\_, 2022 at \_\_\_\_\_:\_\_\_\_\_.m. (prevailing Eastern Time) before the Honorable \_\_\_\_\_ at the United States Bankruptcy Court for the Southern District of New York, , \_\_\_\_ Floor, Courtroom No. \_\_\_\_, New York, New York 10004.
3. Objections to the Verified Petition or the Court’s entry of the Recognition Order shall be (i) made in writing, describe the basis therefore, and indicate the nature and extent of the respondent’s interests in the Foreign Debtor’s Chapter 15 Case, (ii) filed with the Office of the Clerk of the Court, New York, New York 10004, and (iii) served upon Troutman Pepper Hamilton Sanders LLP, 875 Third Avenue, New York, NY 10022 (Attn: Joseph DeFazio and Matthew Brooks), on or before seven (7) days before the Recognition Hearing.
4. The Recognition Notice, substantially in the form attached to the Application as **Exhibit B**, is hereby approved.
5. Prior to mailing the Recognition Notice, the Petitioner may fill in any missing dates and other information, correct any typographical errors, confirm the provisions thereof to the

provisions of this Order, and make such other and further non-material, non-substantive changes as the Petitioner deems necessary or appropriate.

6. The Petitioner shall serve, or cause to be served, on the Notice Parties: (i) the Recognition Notice and Verified Petition by United States or Canadian mail, first class postage prepaid, by close of business on \_\_\_\_\_, 2022.

7. The Petitioner shall serve, or cause to be served, on the Master Service List, including any party requesting to be added thereto, all pleadings filed by the Petitioner in the Chapter 15 Case by United States or Canadian mail, first class postage prepaid and no further or additional notice will be required. Service of all pleadings filed in this Chapter 15 Case on the Master Service List is hereby approved as due and sufficient notice of such pleadings on all interested parties in this Chapter 15 Case.

8. To the extent not previously served, in the event any other interested party files a notice of appearance in the Chapter 15 Case before the Recognition Hearing, the Petitioner shall serve, or cause to be served, on such party the Recognition Notice and Petition within three (3) business days of the filing of such notice of appearance by United States or Canadian mail, first class postage prepaid.

9. Service of the Recognition Notice and the proposed Recognition Order in accordance with this Order is hereby approved as due and sufficient notice of the filing of the Petition, the Recognition Hearing, and the Recognition Objection Deadline.

10. All notice requirements specified in section 1514 of the Bankruptcy Code are hereby waived or otherwise deemed inapplicable to the Chapter 15 Case.

11. This Court shall retain jurisdiction with respect to any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_ 2022  
New York, New York

\_\_\_\_\_  
Honorable \_\_\_\_\_  
United States Bankruptcy Judge

## **Exhibit B**

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*Attorneys for A. Farber & Partners Inc.*

*In its capacity as Foreign Representative of Foreign Debtor, Sunwave Gas & Power Inc.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

SUNWAVE GAS & POWER INC.,

Debtor In a Foreign Proceeding.

Chapter 15

Case No.

**NOTICE OF (I) FILING OF (A) PETITION PURSUANT TO CHAPTER 15  
OF THE BANKRUPTCY CODE AND (II) DEADLINE TO OBJECT TO ENTRY OF  
RECOGNITION ORDER; AND (III) HEARING FOR COURT TO CONSIDER  
CHAPTER 15 PETITION AND ENTRY OF RECOGNITION ORDER**

**PLEASE TAKE NOTICE** that on \_\_\_\_\_, 2022, A. Farber & Partners Inc., duly authorized foreign representative (the “Petitioner”) for the above-captioned debtor (the “Foreign Debtor”) pursuant to Section 49 of Canada’s Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3) (the “Bankruptcy and Insolvency Act”), File No. 31-2806899 (the “Canadian Proceeding”), filed a petition (the “Chapter 15 Petition”) under chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), commencing the Foreign Debtor’s chapter 15 case (collectively, the “Chapter 15 Case”) ancillary to the Canadian Proceeding, with the United States Bankruptcy Court for the Southern District of New York (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that the Petitioner has filed the *Verified Petition For (I) Recognition Of Foreign Main Proceeding, (II) Recognition Of Foreign Representative, And (III) Related Relief and Memorandum Of Law In Support* (the “Verified Petition”), requesting that the Court enter a final order (the “Recognition Order”), after notice and a hearing, (a) granting recognition of the Canadian Proceeding in respect of the Foreign Debtor as a foreign main

proceeding, as defined in section 1502(4) of the Bankruptcy Code; (b) granting all relief afforded to foreign representatives and foreign debtors in a foreign main proceeding automatically upon recognition pursuant to section 1520 of the Bankruptcy Code and, as applicable, discretionary relief pursuant to section 1521 of the Bankruptcy Code, including authorizing the Petitioner to supervise the administration, realization, and distribution of the Foreign Debtor's assets within the territorial jurisdiction of the United States; and (c) granting such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that copies of the Verified Petition and certain other pleadings filed contemporaneously therewith in support of the Verified Petition are available by contacting counsel to the Petitioner, Joseph DeFazio or Matthew Brooks, at Troutman Pepper Hamilton Sanders LLP at 212-704-6000 (or via their respective e-mail addresses on the following page).

**PLEASE TAKE FURTHER NOTICE** that the Court has (i) scheduled a hearing (the "Recognition Hearing") to consider entry of the Recognition Order for \_\_\_\_\_, 2021 at \_\_\_\_:\_\_\_\_.m.(prevailing Eastern Time) before the Honorable [•] at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, [•] Floor, Courtroom No. [•], New York, New York 10004, and (ii) established on or before 4:00 p.m. (prevailing Eastern Time) on [•], 2021, (the "Recognition Objection Deadline") as the deadline to object to the Court's entry of the Recognition Order. A copy of the Petitioner's proposed Recognition Order is attached as **Exhibit A** to the Petitioner's Verified Petition.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Verified Petition or the Court's entry of the Recognition Order shall be (i) made in writing, describe the basis therefore, and indicate the nature and extent of the respondent's interests in the Foreign Debtor's Chapter 15 Case, (ii) filed with the Office of the Clerk of the Court, One Bowling Green, New York, New York 10004, and (iii) served upon Troutman Pepper Hamilton Sanders LLP, 875 Third Avenue, New York, NY 10022 (Attn: Joseph DeFazio and Matthew Brooks), on or before the Recognition Objection Deadline.

**PLEASE TAKE FURTHER NOTICE** that all parties-in-interest in the Chapter 15 Case that are opposed to the Verified Petition or the Court's entry of the Recognition Order must appear at the Recognition Hearing, which hearing may be adjourned from time to time without further notice except for an in-Court announcement at the Recognition Hearing or a filing by the Petitioner on the docket of the Chapter 15 Case of the date and time to which the Recognition Hearing has been adjourned.

**PLEASE TAKE FURTHER NOTICE THAT IF NO RESPONSES OR OBJECTIONS ARE RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE PETITIONER AND ENTER THE RECOGNITION ORDER WITHOUT FURTHER NOTICE OR A HEARING.**

**PLEASE TAKE FURTHER NOTICE** that at the Recognition Hearing, the Court may order the scheduling of a case management conference to consider the efficient administration of the case.



Dated: April 21, 2022

/s/ Andrew L. Buck

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